Supreme Court, U.S.
FILED
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APPENDIX

In The

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-66

PETER E. AARON,

Petitioner,

vs.

SECURITIES AND EXCHANGE COMMISSION,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED JULY 9, 1979
CERTIORARI GRANTED OCTOBER 15, 1979

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NOTATION WHERE OPINION OF THE COURT BELOW MAY BE FOUND IN THE PETITION FOR CERTIORARI

The following opinions have been omitted in printing this appendix because they appear on the following pages in the appendix to the printed Petition for Certiorari:

Opinion of the District Court for the Southern District of New York, dated May 3, 1977 ..... A30

Opinion of the Court of Appeals for the Second Circuit dated March 12, 1979 ..... A1

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

76-0907 Judge Gagliardi

S.E.C. -vs- E.L. Aaron & Co. Inc., et al.

DATE	PROCEEDINGS
2-26-76	Filed complaint and issued summons.
2-26-76	Filed Pltffs Affdvt and Order for appt to make service upon defts. pursuant to Rule 4(c) FRCP of Summons and Complaint by Tucker, Mandel, Globerman, Valery, Catalano, Lindsay, etc. Clk.
3-9-76	Filed Pltff's affdvt and Notice of Motion re: order of preliminary injunction enjoining Defts. E.L. Aaron & Co. Inc., Edward L. Aaron, Peter E. Aaron and Norman Lawrence Schreiber from further violations of Sec. Act of 1933, etc. ret. 3/16/76.
3-9-76	Filed Affdvt of Service by Thomas E. Valery for pltff pf copies of Notice of Motion for Preliminary Injunction and Affdvt and Memorandum of Law in support of defts. Lawn-A-Mat Chemical & Equipment Corp and Daniel Dorfman by Daniel Dorfman on 3/1/76.
3-9-76	Filed Affdvt of Service by Remo Catalano for pltff on 2/26/76 of copies of Notice of Motion for Preliminary Injunction, Affidavit and Memorandum of Law in support on defts. E.L. Aaron & Co. Inc., Edward L. Aaron, Peter E. Aaron, Norman Lawrence Schreiber and Donald Darwin Jacobson, by Martin Kaplan, US

Relevant Docket Entries

	Courthouse; also service on Fernando Erazo by personally handing such documents to same personally on 2/26/76.
3-9-76	Filed Memorandum of Law in support of pltff's motion for preliminary injunction.
3-15-76	Filed ANSWER of Deft. E.L. Aaron & Co. Inc. BLG
3-15-76	Filed ANSWER of Deft. Norman Lawrence Schreiber BLG
3-15-76	Filed ANSWER of Deft. Donald Darwin Jacobson BLG
3-15-76	Filed ANSWER of Deft. Peter E. Aaron BLG
3-15-76	Filed ANSWER of Deft. Edward L. Aaron BLG
3-31-76	Filed Judgment of Permanent Injunction of Fernando Erazo by Consent. Ordered that deft. Erazo, etc. are permanently enjoined from directly or indirectly employ any device, scheme or artifice to defraud, etc. Further ordered that deft. Erazo make himself available and respond to any subpoena or notice to take deposition at request by SEC. Gagliardi, J. JUDGMENT ENTERED. Clk
4-13-76	Filed Summons with Affdvt of Service by Remo Catalano for pltff upon all defts (except Laun-A-Mat Chemical & Equipment Corp and Daniel Dorfman) on 2/26/76 and Fernando Erazo same date, 3 p.m.

Relevant Docket Entries

	Affdvt of Service by Thomas E. Valery for pltff upon defts. Lawn-A-Mat Chemical & Equipment Corp and Daniel Dorfman on 3/1/76, 5:10 p.m. approximately.
5-4-76	Filed Affdvt of Acknowledgement by Fernando Erazo, deft of certified copy of Final Judgment of Permanent Injunction against same.
5-24-76	Filed Final Judgment of Permanent Injunction of Deft. Daniel Dorfman by consent. Gagliardi, J. JUDGMENT ENTERED. Ent. 5/25/76
5-28-76	Filed Final Judgment of Permanent Injunction of Deft. E.L. Aaron & Co. Inc. by Consent. Gagliardi, J. JUDGMENT ENTERED. Clk. Ent. 6/1/76
5-28-76	Filed Final Judgment of Permanent Injunction of Deft. Edward L. Aaron by Consent. Gagliardi, J. JUDGMENT ENTERED. Clk. Ent. 6/1/76
5-28-76	Filed Final Judgment of Permanent Injunction of Norman Lawrence Schreiber by Consent. Gagliardi, J. JUDGMENT ENTERED. Clk. Ent. 6/1/76
5-29-76	Filed Final Judgment of Permanent Injunction of Donald Darwin Jacobson by Consent. Gagliardi, J. JUDGMENT ENTERED. Clk. Ent. 6/1/76
6-28-76	Filed ANSWER of Deft. Peter E. Aaron. CJH
8-3-76	Filed Affdvt of Peter Aaron in opposition to pltff's Motion for Preliminary Injunction.

Relevant Docket Entries

8-19-76	Filed 1st set of interrogs propounded to pltff by deft. Peter Aaron.
8-26-76	Filed Affdvt of Acknowledgment by Edward L. Aaron for pltff with certified copy of Final Judgment of Permanent Injunction, signed 5/28/76.
8-26-76	Filed Affdvt of Acknowledgment by Edward L. Aaron for pltff with certified copy of Final Judgment of Permanent Injunction against E.L. Aaron & Co. Inc. on 6/1/76.
8-26-76	Filed Affdvt of Acknowledgement by Donald Darwin Jacobson for Pltff of certified copy of Final Judgment of Permanent Injunction on 5/28/76.
8-26-76	Filed Affdvt of Acknowledgment by Norman Lawrence Schreiber of certified copy of Final Judgment of Permanent Injunction on May 28, 1976.
8-26-76	Filed Pltff's Notice to take deposition of Dan Brescher.
8-26-76	Filed Pltff's Notice to take deposition of Peter E. Aaron.
9-17-76	Filed pltff. Commission's Answers to deft. Peter E. Aaron's first set of interrogs.
9-21-76	Filed Defts. Notice of Deposition of Milton Kean Pursuant to Rules 26 and 30 of the F.R.C.P. at 3:00 P.M. on 10-4-76.

Relevant Docket Entries

9-28-76	Filed Affdvt of Acknowledgment by Daniel Dorfman of Copy of Final Judgment of Permanent Injunction on 6/10/76.
10-8-76	Filed Final Judgment of Permanent Injunction of Lawn-A-Mat Chemical & Equipment Corp. by Consent. Gagliardi, J. JUDGMENT ENTERED. Clk (mn) Ent. 10/8/76
10-19-76	Filed Deposition of Peter Aaron (mn)
10-19-76	Filed Deft. Peter Aaron notice to take deposition of Fernando Erazo.
11-1-76	Filed Pltff's notice to take deposition of Edward L. Aaron.
11-10-76	Filed Letter from SEC dated 11/9/76 to Charles Hecht, Esq. of withdrawal of notice to take deposition of Edward L. Aaron.
11-10-76	Filed Affdvt of Acknowledgment by Daniel Dorfman, deft of certified copy of Final Judgment of Permanent Injunction on 10/8/76.
12-9-76	Filed Pltff's Notice to Take Deposition of Silverman; Kaplan & Strauss.
12-13-76	Filed Pltff's Notice to Take Deposition of Philip Shapiro.
12-27-76	Filed Pltff's Notice of Deposition of Stanley Gordon on 12-18-76.
1-6-77	Filed Principal issues submitted on behalf of deft. Peter M. Aaron.

Relevant Docket Entries

1-6-77	Filed Proposed Findings of Fact and Conclusions of Law submitted on behalf of deft. Peter E. Aaron.
1-10-77	Filed Principal issues submitted on behalf of deft. Peter E. Aaron.
1-11-77	Trial begun with Non-Jury before Gagliardi, J.
1-12-77	Trial contd.
1-13-77	Trial contd.
1-14-77	Trial contd. and concluded. Decision reserved.
2-2-77	Filed Memorandum of Law of Deft. Peter Aaron.
2-4-77	Filed Pltff's Proposed Findings of Fact and Conclusions of Law.
2-4-77	Filed Pltff's Memorandum in Support of Proposed Findings of Fact and Conclusions of Law.
2-9-77	Filed Deft. Peter Aaron Reply Memorandum.
2-10-77	Filed Pltff's Reply Brief.
4-13-77	Transcript of record of proceedings dated 1-11, 12-13-14-77.
4-15-77	Filed Transcript of Record of Proceedings dated 1-11-77.
4-15-77	Filed Transcript of Record of Proceedings dated 1-12-77.

Relevant Docket Entries

4-15-77	Filed Transcript of Record of Proceedings dated 1-13-77.
4-15-77	Filed Transcript of Record of Proceedings dated 1-14-77.
4-15-77	Filed Summaries of Depositions of Donald Jacobson, Kaplan, Strauss, Gordon, Silberman, Firrinciello and Shapiro submitted by Deft. Peter Aaron.
4-15-77	Filed Proposed Findings of Fact and Conclusions of Law submitted on behalf of Deft. Peter E. Aaron.
4-15-77	Filed Deft. Peter E. Aaron Synopsis of principal cases and principal issues.
4-15-77	Filed Principal issues submitted on behalf of Deft. Peter E. Aaron.
5-5-77	Filed OPINION #45870. SUBMIT JUDGMENT ON 5 Day's Notice. Gagliardi, J. m/n
5-24-77	Filed Final Judgment of Permanent Injunction of Peter E. Aaron, Deft. Ordered that Deft. Peter E. Aaron, agents, etc. are permanently enjoined from directly or indirectly in absence of any applicable statutory exemption as indicated. Court shall retain jurisdiction of this matter for all purposes. Gagliardi, J. JUDGMENT ENTERED. Clk m/n Ent. 5/24/77
6-2-77	Filed Deft. Peter E. Aaron's Notice of Appeal from Final Judgment of Permanent Injunction entered on 5 24 77. (mailed copy to William D. Moran, Adm. 26 Federal Plaza, NY 10007)

Relevant Docket Entries

6-3-77	Filed Stip and Order of substitution of attys. for Peter E. Aaron.
6-8-77	Filed Affidavit of Service of a certified copy of the Final Judgment of Permanent Injunction by Jonathan O. Lee.

COMPLAINT OF THE SECURITIES AND EXCHANGE COMMISSION FILED FEBRUARY 26, 1976

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION

Plaintiff,

-against-

E.L. AARON & CO., INC.
LAWN-A-MAT CHEMICAL & EQUIPMENT CORP.
EDWARD L. AARON
PETER E. AARON
NORMAN LAWRENCE SCHREIBER
DONALD DARWIN JACOBSON
DANIEL DORFMAN
FERNANDO ERAZO

Defendants.

76 Civil 907

Judge Gagliardi

Plaintiff, Securities and Exchange Commission ("Commission"), for its Complaint herein alleges:

1. Defendants E.L. Aaron & Co. Inc., Edward L. Aaron, Peter E. Aaron and Norman Lawrence Schreiber, have been engaged, are engaged and are about to engage in acts and practices which constitute and will constitute, violations of Sections 5(a) and 5(c) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. 77e(a) and 77e(c); and defendants E.L. Aaron & Co. Inc., Edward L. Aaron, Peter E. Aaron, Norman Lawrence Schreiber, Donald Darwin Jacobson, Lawn-A-Mat

Chemical & Equipment Corp., Daniel Dorfman and Fernando Erazo, have been engaged, are engaged, and are about to engage in acts and practices which constitute, and will constitute, violations of Section 17(a) of the Securities Act, 15 U.S.C. 77q(a) and Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. 240.10b-5.

2. The Commission, pursuant to authority contained in Sections 10(b) and 23(a) of the Exchange Act, 15 U.S.C. 78j(b) and 78w(a), has promulgated Rule 10b-5, 17 C.F.R. 240.10b-5 thereunder, which is now and at all times herein relevant been in effect.

JURISDICTION AND VENUE

3. The Commission brings this action pursuant to authority conferred by Section 21(b) of the Securities Act, 15 U.S.C. 77t(b), and Section 21(d) of the Exchange Act, 15 U.S.C. 78u(d) to enjoin said acts and practices.

4. This Court has jurisdiction of this action pursuant to Section 22(a) of the Securities Act, 15 U.S.C. 77v(a), and Section 27 of the Exchange Act, 15 U.S.C. 78aa.

5. The defendants have been engaged and are engaged in certain acts and practices within the Southern District of New York and elsewhere in connection with, and constituting the violations complained of herein. Such actions were effected by making use of the means and instrumentalities of interstate commerce and of the mails.

THE DEFENDANTS

6. *Defendant E.L. Aaron & Co. Inc.* ("Aaron & Co."), is a New York corporation with its principal office located at 50

Broad Street, New York, New York 10004. In November 1974, Aaron & Co. opened a branch office at 142 Mineola Avenue, Roslyn Heights, New York ("Long Island Office"). Aaron & Co. is a broker-dealer registered with the plaintiff Commission since June 5, 1961 pursuant to the provisions of Section 15(b) of the Exchange Act, 15 U.S.C. 78o, and is a member of the National Association of Securities Dealers, Inc.

7. *Defendant Lawn-A-Mat Chemical & Equipment Corp.* ("LAM"), formerly known as Consolidated Home and Garden Services, Inc., is a New York corporation with its executive offices located at 153 Jefferson Avenue, Mineola, New York. LAM's common stock has been registered with the Commission pursuant to Section 12(g) of the Exchange Act, 15 U.S.C. 781(g), since March 1967 and is traded in the over-the-counter market. As of December 31, 1974, LAM had issued and outstanding 2,229,232 common shares owned by some 676 shareholders. LAM is engaged in the business of selling franchises and products for lawn care, and provides combines, trailers and tractors to franchisees for the application of lawn care products also supplied by LAM. On January 23, 1976 LAM filed a petition for an arrangement pursuant to Chapter XI of the Bankruptcy Act in the United States District Court for the Eastern District of New York.

8. *Defendant Edward L. Aaron* ("E. Aaron") is the president and sole shareholder of Aaron & Co. and had been a partner in the firm's predecessor from 1947 to its incorporation in 1961. E. Aaron resides at 3215 Netherland Avenue, Bronx, New York.

9. *Defendant Peter E. Aaron* ("P. Aaron"), the son of E. Aaron, is assistant to the president and, during the relevant period referred to herein, functioned as office manager of Aaron & Co. He has been associated with Aaron & Co. as a registered representative since 1967 and resides at 119 State Street, Brooklyn, New York.

10. *Defendant Norman Lawrence Schreiber* ("Schreiber") was associated with Aaron & Co. as a principal of the firm from October 1974 to September 1975. Schreiber resides at 191 North Elm Street, North Massapequa, New York.

11. *Defendant Donald Darwin Jacobson* ("Jacobson") was associated with Aaron & Co. as a registered representative in its Long Island Office from December 1974 to September 1975. Jacobson resides at 50 The Birches, Roslyn Estates, New York.

12. *Defendant Daniel Dorfman* ("Dorfman") was president, chief operating officer and chairman of the board of directors of LAM from its inception in 1961 to September 1974. From September 1974 to March 1975, he was chairman of the board of directors and president. From March 1975 to the present, Dorfman has been chairman of the board of directors and owns or controls over 43% of the common stock of LAM. Dorfman resides at 34 Canterbury Road, Woodbury, New York.

13. *Defendant Fernando Erazo* ("Erazo") was chief operating officer and a director of LAM from September 1974 until August 1975. During this period, he also, at various times, held the positions of president and executive vice president. Erazo resides at 15 West 84th Street, New York, New York.

COUNT I

VIOLATIONS OF SECTIONS 5(a) AND 5(c) OF THE SECURITIES ACT, 15 U.S.C. 77e(a) AND 77e(c) — OFFER, SALE AND DELIVERY AFTER SALE OF UNREGISTERED SECURITIES OF LAM

14. Plaintiff Commission realleges and incorporates by reference each and every allegation contained in paragraphs 1 through 13.

15. During the period from November 1974 to the date hereof, defendants Aaron & Co., E. Aaron, P. Aaron and Schreiber, singly and in concert, directly and indirectly, have been offering for sale, selling and delivering after sale securities, namely, the common stock of LAM and have been and are causing and inducing the offer, sale and delivery after sale of these securities.

16. Specifically, in or about November 1974 and February 1975, defendant Schreiber solicited the sale of a total of 21,000 shares of LAM common stock owned by the defendant Dorfman and a vice president of LAM.

17. Defendants P. Aaron and Schreiber arranged for these shares to be sold to an intermediary broker-dealer, J.W. Weller & Co., Inc. ("Weller & Co.") who thereafter transferred the shares to the defendant Aaron & Co.

18. In connection with these transactions Weller & Co. acted as a mere conduit and, in fact, the actual purchaser was Aaron & Co. who acquired the shares for its own proprietary account.

19. At or about the time that Aaron & Co. purchased these shares for its own account, Aaron & Co. and Schreiber solicited and arranged for the solicitation of customers' orders to buy the LAM shares sold by defendant Dorfman and the LAM vice president.

20. No registration statement as is required by Section 5 of the Securities Act has been filed with the Commission or is in effect with respect to such offers, sales or deliveries after sale of LAM common stock, as described in paragraph 16.

21. Although the defendants Aaron & Co., P. Aaron and Schreiber purportedly relied on Section 4 of the Securities Act,

15 U.S.C. 77(d), and Rule 144, 17 C.F.R. 230.144 promulgated thereunder, as the basis for not complying with the registration requirements of the Securities Act in connection with the transactions described in paragraphs 16-20 above, no such exemption was available because the transactions failed to comply with the conditions of Rule 144 in, among others, the following respects:

(a) the sales by Aaron & Co. were not made as agent for the sellers, but rather as principal for its own account and were, therefore, not made in "brokers' transactions" as required by Rule 144(f) and defined, for purposes of the Rule, by Rule 144(g);

(b) Aaron & Co. and Schreiber solicited and arranged for the solicitation of orders to buy the securities in anticipation of or in connection with the sales, in contravention of Rule 144(f)(i).

22. Defendant E. Aaron aided and abetted the violative conduct of defendants Aaron & Co., P. Aaron and Schreiber, in that he failed to prevent or terminate the type of activity in which the defendants Aaron & Co., P. Aaron and Schreiber engaged as is described above in paragraphs 15 through 21, at a time when defendant E. Aaron knew or should have known of such activity.

23. By reason of the foregoing, defendants Aaron & Co., E. Aaron, P. Aaron and Schreiber have, singly and in concert, directly and indirectly, violated and aided and abetted violations of Sections 5(a) and 5(c) of the Securities Act, 15 U.S.C. 77e(a) and 77e(c).

COUNT II

VIOLATIONS OF SECTION 17(a) OF THE SECURITIES ACT, 15 U.S.C. 77q(a).

Complaint

SECTION 10(b) OF THE EXCHANGE ACT, 15 U.S.C. 78j(b) AND RULE 10b-5 THEREUNDER, 17 C.F.R. 240.10b-5 — FRAUD IN CONNECTION WITH THE OFFER, SALE OR PURCHASE OF SECURITIES

24. Plaintiff Commission realleges and incorporates by reference each and every allegation contained in paragraph 1 through 23.

25. Since November 1974, the defendants Aaron & Co., E. Aaron, P. Aaron, Schreiber, Jacobson, LAM, Dorfman and Erazo, directly and indirectly, singly and in concert, and aiding and abetting each other, by use of the means and instruments and instrumentalities of interstate commerce and of the mails, have been and are now, employing devices, schemes and artifices to defraud, making untrue statements of material facts and omitting to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading and engaging in acts, practices and a course of business which had operated, now operates and will operate as a fraud and deceit upon purchasers and prospective purchasers in connection with the purchase, offer to sell and sale of certain securities, namely, the common stock of LAM, in violation of Section 17(a) of the Securities Act, 15 U.S.C. 77q(a), Section 10(b) of the Exchange Act, 15 U.S.C. 78j(b) and Rule 10b-5 thereunder, 17 C.F.R. 240.10b-5.

26. As part of and in furtherance of the aforesaid conduct, defendants Aaron & Co., E. Aaron, P. Aaron, Schreiber and Jacobson, singly and in concert, would and did:

(a) actively seek out investors and prospective investors and offer for sale and sell to them common shares of LAM; and

Complaint

(b) obtain money and property from over 100 investors throughout the United States for such shares by the use of false and misleading statements, as if more fully described in paragraphs 27 and 28.

27. As a part of such scheme and artifice to defraud, during the period from November 1974 to September 1975, defendants Jacobson and Schreiber in telephone conversations, letters and otherwise, made to investors and prospective investors in the securities of LAM untrue statements of material facts, including, among other things:

(a) that LAM was building a tractor and a gas saving, economy, anti-pollution, electric automobile;

(b) that LAM was about to acquire certain of its materials suppliers, an upstate New York company whose stock was selling for $3 per share and other companies;

(c) that LAM's sales revenues would be five (5) million dollars this year and twenty-five (25) million dollars in five (5) years;

(d) that the price of LAM common stock would double or triple in price within a year; and

(e) statements of similar purport and object.

28. In connection with such scheme and artifice to defraud, defendants Jacobson and Schreiber further omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, including, among other things:

(a) that the defendants had no basis to project that LAM's sales revenues would be five (5) million dollars this year and twenty-five (25) million dollars in five years;

(b) that the defendants had no basis to project that the price of LAM common stock would double or triple within a year; and

(c) that LAM was not profitable and was in need of additional capital.

29. Defendants E. Aaron and P. Aaron aided and abetted the violative conduct of defendants Aaron & Co., Schreiber and Jacobson, in that they failed to prevent or terminate the use, by Schreiber and Jacobson, of false and misleading representations, described above in paragraphs 27 and 28, in the offer and sale of LAM common stock to the public at a time when E. Aaron and P. Aaron knew or should have known of such activity.

30. In or about November of 1974 LAM caused a list of its stockholders to be supplied to the defendants Aaron & Co and Schreiber.

31. In or about January of 1975 LAM supplied a list of its franchisees to the defendants Aaron & Co. and Schreiber.

32. The two lists described above in paragraphs 30 and 31 were supplied to the defendants Aaron & Co. and Schreiber by the defendant LAM in order for the defendant Aaron & Co. to notify such persons that purchases and sales of LAM securities could be effected through the defendant Aaron & Co.

33. Thereafter, the defendant Aaron & Co. became the principal market maker in LAM's common stock.

34. Moreover, the defendants LAM, Dorfman and Erazo provided the defendants Aaron & Co., Jacobson and Schreiber with information concerning the operations and future prospects of LAM.

35. During the period from November of 1974 to September of 1975 the price of LAM's common stock rose from 13¢ per share to 88¢ per share.

36. During this same period from November 1974 to September 1975, defendants LAM, Dorfman and Erazo were repeatedly apprised of the false and misleading representations, described above in paragraphs 27 and 28, being made by defendant Jacobson and Schreiber in connection with the offer and sale of LAM common stock.

37. Nevertheless, despite having actual knowledge of these false and misleading representations, neither LAM, Dorfman nor Erazo notified any regulatory authorities, nor made any disclosure to its shareholders or franchisees whose names LAM supplied to Aaron & Co. correcting or disaffirming the inaccurate information, nor did they take any other effective action to halt or prevent the type of activity in which the defendants Aaron & Co., Jacobson and Schreiber were engaged.

38. There was no valid business purpose which justified the failure of the defendants LAM, Dorfman and Erazo to take action such as that described in paragraph 37 above.

39. By reason of the foregoing, the defendants Aaron & Co., Schreiber and Jacobson, singly and in concert, have violated, are violating and are about to violate and E. Aaron, P. Aaron, LAM, Dorfman and Erazo have aided and abetted, are aiding and abetting and are about to aid and abet violations of Section 17(a) of the Securities Act, 15 U.S.C. 77q(a), Section 10(b) of the Exchange Act, 15 U.S.C. 78j(b) and Rule 10b-5 thereunder, 17 C.F.R. 240.10b-5.

WHEREFORE, plaintiff Commission respectfully demands:

I. That this Court issue a preliminary injunction and final judgment of permanent injunction enjoining:

A. Defendants Aaron & Co., E. Aaron, P. Aaron and Schreiber, the officers of Aaron & Co., their agents, servants, employees, attorneys, nominees and those persons in active concert or participation with them, and each of them, from, directly or indirectly, violating or aiding and abetting violations of Sections 5(a) and 5(c) of the Securities Act, 15 U.S.C. 77e(a) and 77e(c), by directly or indirectly, in the absence of any applicable statutory exemption:

(1) making use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell, through the use or medium of any prospectus or otherwise, the common stock of LAM, or any other security, unless and until a registration statement has been filed with the Commission as to such securities;

(2) making use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell, through the use or medium of any prospectus, or otherwise, the common stock of LAM, or any other security, unless and until a registration statement is in effect with the Commission as to such securities;

(3) carrying or causing to be carried through the mails or in interstate commerce, by any means or instruments of transportation, the common stock of LAM, or any other security, for the purpose of sale or delivery after sale, unless and until a registration statement is in effect with the Commission as to such securities.

B. Defendants Aaron & Co., E. Aaron, P. Aaron, Schreiber, Jacobson, LAM, Dorfman and Erazo, the officers of

Aaron & Co. and LAM, their agents, servants, employees, attorneys, nominees, and those persons in active concert or participation with them and each of them, from, directly or indirectly, violating or aiding and abetting violations of Section 17(a) of the Securities Act, 15 U.S.C. 77q(a) and Section 10(b) of the Exchange Act, 15 U.S.C. 78j(b) and Rule 10b-5 thereunder, 17 C.F.R. 240.10b-5 by the use of any means or instruments or instrumentality of interstate commerce, or of the mails or of any facility of any national securities exchange, in connection with the offer, purchase or sale of the common stock of LAM, or any other security:

(1) employing any device, scheme or artifice to defraud;

(2) making any untrue statements of a material fact or omitting to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or

(3) engaging in any act, practice or course of business which operates as a fraud or deceit upon any person.

II. That this Court grant plaintiff such other and further relief as the Court may deem appropriate.

Respectfully submitted,

s/ William D. Moran
WILLIAM D. MORAN
Regional Administrator
Attorney for Plaintiff
SECURITIES AND
EXCHANGE COMMISSION
26 Federal Plaza
New York, New York 10007
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Of Counsel:
DONALD N. MALAWSKY
JEFFREY H. TUCKER
BARRY J. MANDEL
BARRY B. GLOBERMAN

Dated: New York, New York
February 26, 1976

ANSWER OF PETER AARON FILED JUNE 25, 1976

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

76 Civil 907

[TITLE OMITTED]

Defendant, Peter Aaron, by his attorney, Charles J. Hecht, for his Answer herein alleges:

1. Insofar as paragraphs 1 and 5 refer or relate to this defendant, defendant denies each and every allegation in such paragraphs. Insofar as paragraphs 1 and 5 refer to E. L. Aaron & Co. ("Aaron & Co."), Edward L. Aaron, Norman Lawrence Schreiber ("Schreiber"), Donald Darwin Jacobson ("Jacobson"), Lawn-A-Mat Chemical & Equipment Corp. ("Lawn-A-Mat"), Daniel Dorfman ("Dorfman") and Ferenando Erazo ("Erazo") defendant has insufficient knowledge or information to form a belief of the allegations referring or relating to the defendants Schreiber, Jacobson, Lawn-A-Mat, Dorfman and Erazo and based on information and belief denies each and every allegation of paragraphs 1 and 5 as they refer or relate to Edward L. Aaron and Aaron & Co.

2. Admits the allegations in paragraphs 2, 3, 4 and 6.

3. Denies sufficient knowledge or information to form a belief as to the allegations in paragraph 7 and affirmatively alleges that based upon information and belief at all times relevant hereto Lawn-A-Mat was a reporting company and that its filings were current with the Securities and Exchange Commission.

4. Defendant admits the allegations in paragraph 8.

Answer

5. Defendant admits that he is the son of Edward L. Aaron and during the relevant period referred to herein was employed by Aaron & Co., that he has been associated with Aaron & Co. since 1967 and resides at 119 State Street, Brooklyn, New York. Defendant is unable to respond to the allegation that he "functioned as office manager of Aaron & Co." since he does not know how the plaintiff is utilizing such term.

6. Defendant admits the allegations in paragraph 10 and affirmatively alleges that Schreiber was a registered principal of Aaron & Co. who was responsible for all aspects of the operation of the Long Island Branch Office of Aaron & Co.

7. Defendant admits the allegations in paragraph 11.

8. Defendant has insufficient knowledge or information to form a belief as to the allegations set forth in paragraphs 12 and 13.

9. As to paragraph 14 of the Complaint, the defendant repeats and realleges the responses set forth above.

10. Insofar as the allegations in paragraph 15 refer or relate to this defendant, the defendant denies each and every allegation contained therein. Insofar as the allegations contained in paragraph 15 refer or relate to Schreiber, the defendant has insufficient knowledge or information sufficient to form a belief. Insofar as the allegations in paragraph 15 relate to Aaron & Co. and Edward L. Aaron, based on information and belief this defendant denies such allegations except admits that subsequent to October, 1974 he was aware that Aaron & Co. maintained a market for the Common Stock of Lawn-A-Mat and that in connection with such activities directly or indirectly participated in the sale or delivery of the Common Stock of Lawn-A-Mat.

Answer

11. Based upon information and belief the defendant denies the allegations contained in paragraph 16.

12. Insofar as the allegations in paragraph 17 refer or relate to the defendant, this defendant specifically denies such allegations and affirmatively alleges that any "arrangements" with J. W. Weller & Co., Inc. were done pursuant to the advice of counsel to Aaron & Co. Insofar as the allegations in paragraph 17 refer or relate to Schreiber, defendant has insufficient knowledge or information to form a belief.

13. Defendant denies knowledge or information sufficient to form a belief as to the allegations in paragraph 18 and affirmatively alleges that any transactions with J. W. Weller & Co. were done pursuant to the advice of counsel.

14. Insofar as the allegations in paragraph 19 refer or relate to Aaron & Co. based upon information and belief defendant denies such allegations. Insofar as the allegations in paragraph 19 refer or relate to Schreiber, defendant has insufficient knowledge or information to form a belief as to the allegations.

15. As to the allegations in paragraph 20, defendant alleges that they are argumentative and are conclusions of law and, accordingly, do not require a response; but, insofar as they may be deemed to be material allegations of fact, defendant alleges that no registration statement was required by Section 5 of the Securities Act of 1933, as amended, with respect to the 21,000 shares of Common Stock of Lawn-A-Mat referred to in the Complaint.

16. As to the allegations contained in paragraph 21, defendant alleges that they are argumentative and are conclusions of law and, accordingly, do not require a response; but, insofar as they may be deemed to be material allegations of fact, defendant alleges that the 21,000 shares of Common Stock

of Lawn-A-Mat referred to in the Complaint were, based upon information and belief acquired by the record and beneficial owners prior to April 15, 1972. Accordingly, the provisions of Rule 144 (17 C.F.R. 230.144), promulgated under the Securities Act of 1933, as amended (the "Act"), need not be complied with and, in any event, based upon information and belief the alleged acts and transactions of Aaron & Co. were not in violation of said rule. Insofar as the allegations in subparagraph (b) of paragraph 21 relating to Aaron & Co., defendant alleges that based upon information and belief Aaron & Co. did not solicit or arrange for the solicitation of orders to buy the securities for its customers in anticipation of or in connection with the sales in contravention of Rule 144(f)(i). Insofar as the allegations in subparagraph (b) of paragraph 21 refer or relate to Schreiber defendant has insufficient knowledge or information to form a belief.

17. Insofar as the allegations in paragraph 22 refer or relate to this defendant, defendant denies each and every allegation. Insofar as the allegations in paragraph 22 refer or relate to Aaron & Co. and Edward L. Aaron, based upon information and belief, defendant denies each and every allegation. Insofar as the allegations in paragraph 22 refer or relate to Schreiber, defendant has insufficient knowledge or information to form a belief.

18. Defendant denies each and every allegation in paragraph 23.

19. As to paragraph 24, defendant repeats and realleges as if set forth in full herein his responses contained in paragraphs 1 through 18, inclusive.

20. Insofar as the allegations in paragraph 25 refer or relate to this defendant, defendant denies each and every allegation. Insofar as the allegations contained in paragraph 25 refer or

relate to Aaron & Co. and Edward L. Aaron, based upon information and belief, defendant denies each and every allegation. Insofar as the allegations in paragraph 25 refer or relate to the defendants, Schreiber, Jacobson, Lawn-A-Mat, Dorfman and Erazo, defendant has insufficient knowledge or information to form a belief.

21. Insofar as the allegations in paragraph 26 refer or relate to this defendant, defendant denies each and every allegation. Insofar as the allegations in paragraph 26 refer or relate to Edward L. Aaron, based upon information and belief, defendant denies each and every allegation. Insofar as the allegations in paragraph 26 refer or relate to Aaron & Co., based upon information and belief, defendant denies such allegations except he admits that subsequent to October, 1974, Aaron & Co. maintained a market for the Common Stock of Lawn-A-Mat and did participate in the purchase and sale of the Common Stock of Lawn-A-Mat. Insofar as the allegations in paragraph 26 refer or relate to Schreiber and Jacobson, defendant has insufficient knowledge or information to form a belief.

22. As to the allegations contained in paragraph 27, the defendant alleges that they are argumentative and are conclusions of law and, accordingly, do not require a response; but, insofar as they may be deemed to be material allegations of fact, defendant alleges as follows:

(a) that based upon information and belief Lawn-A-Mat and/or persons affiliated with it had furnished information to Aaron & Co. that it was entering into the following new lines of business: (i) the manufacture and distribution of a new type of tractor and (ii) the manufacture and distribution of a new automobile and that a company affiliated with Lawn-A-Mat had entered into a "Letter of Intent" with Aaron & Co. for the latter to act as its underwriter in connection with a proposed

offering of additional securities, the net proceeds of which would primarily be utilized for the financing of these proposed additional lines of business.

(b) defendant denies knowledge or information sufficient to form a belief as to subparagraphs (b), (c), (d) and (e) and affirmatively alleges that if such representations were made by Schreiber and Jacobson they were made without the knowledge or consent of defendant, Edward L. Aaron and Aaron & Co. and that such alleged representations were in contravention of Aaron & Co's. internal compliance manual.

23. As to the allegations contained in paragraph 23, defendant alleges that they are argumentative and are conclusions of law and, accordingly, do not require a response; but, insofar as they may be deemed to be material allegations of fact, defendant alleges that at all times material herein he was unaware of the alleged false and misleading representations as described in subparagraph (b) through (e) of paragraph 27 of the Complaint and that any such alleged misrepresentations by Schreiber and Jacobson were in contravention of the internal compliance manual of Aaron & Co.

24. As to the allegations contained in paragraph 24, defendant alleges that they are argumentative and are conclusions of law and, accordingly, do not require a response; but, insofar as they may be deemed to be material allegations of fact, defendant specifically denies such allegations and affirmatively alleges that upon being advised by Milton Kean, counsel to Lawn-A-Mat, of possible improprieties by the Long Island office of Aaron & Co., defendant immediately informed an officer of Aaron & Co. of Mr. Kean's concern and pursuant to the instructions of an officer of Aaron & Co. immediately notified the registered principal of the Long Island office to

cease all solicitations of the Common Stock of Lawn-A-Mat and was advised by such registered principal that these instructions would be followed.

25. Based upon information and belief defendant denies the allegations set forth in paragraph 30 insofar as they relate to Aaron & Co. and affirmatively alleges that if such stockholders list was caused to be furnished by Lawn-A-Mat, it was furnished to Schreiber and/or Jacobson.

26. Based upon information and belief defendant denies the allegations contained in paragraph 31 insofar as they relate to Aaron & Co. and affirmatively alleges that if such list of franchisees was furnished by Lawn-A-Mat, it was furnished to Schreiber and/or Jacobson.

27. As to the allegations contained in paragraph 32, defendant alleges that they are argumentative and are conclusions of law and, accordingly, do not require a response; but, insofar as they may be deemed to be material allegations of fact, defendant alleges, based upon information and belief, subsequent to October, 1974, Aaron & Co. maintained a market for the Common Stock of Lawn-A-Mat.

28. Defendant has insufficient knowledge or information to form a belief as to the allegations contained in paragraph 33 except that based upon information and belief Aaron & Co. maintained a market for the Common Stock of Lawn-A-Mat subsequent to October, 1974.

29. Based upon information and belief defendant admits the allegations in paragraph 34.

30. Defendant has insufficient knowledge or information to form a belief as to the allegations in paragraphs 35 and 36.

Answer

31. As to the allegations contained in paragraph 37 defendant alleges that they are argumentative and are conclusions of law and, accordingly, do not require a response; but, insofar as they may be deemed to be material allegations of fact, defendant alleges as follows:

(a) denies knowledge or information sufficient to form a belief as to such allegations insofar as they relate to Lawn-A-Mat, Dorfman and Erazo.

(b) that based upon information and belief the names of shareholders or franchisees of Lawn-A-Mat were only furnished to Schreiber and/or Jacobson.

(c) insofar as such allegations relate to Aaron & Co., Jacobson and Schreiber, defendant has insufficient knowledge or information to form a belief.

32. As to the allegations contained in paragraph 38, defendant alleges that they are argumentative, are conclusions of law and are not applicable to this defendant and, accordingly, do not require a response; but, insofar as they may be deemed to be material allegations of fact, the defendant denies knowledge or information sufficient to form a belief.

33. Insofar as paragraph 39 refers or relates to this defendant, defendant denies each and every allegation in such paragraph. Insofar as the allegations in paragraph 39 refer or relate to Edward L. Aaron and Aaron & Co., based upon information and belief, defendant denies each and every allegation. Insofar as paragraph 39 refers to Schreiber, Jacobson, Lawn-A-Mat, Dorfman and Erazo, defendant has insufficient knowledge or information to for a belief as to the allegations set forth in paragraph 39.

Answer

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

34. Based upon information and belief the 21,000 shares of Common Stock of Lawn-A-Mat referred to in the Complaint were purchased by the record and beneficial owners (Dorfman and a Vice-President of Lawn-A-Mat) prior to April 15, 1972 and as at November 1974 such persons had been the record and beneficial owners of such securities for more than three years.

35. Under the rules and regulations promulgated under the Act, as well as the interpretive releases then in effect, such persons would not be deemed to be underwriters as that term is defined by Section 2(11) of the Act and thus, compliance with the provisions of Rule 144 are elective and not mandatory.

36. Even if Rule 144 is deemed exclusively applicable to the alleged acts and transactions relating to the sale of 21,000 shares of Common Stock of Lawn-A-Mat the term "brokers' transactions", as used in Rule 144(f), is defined and explained in 144(g)(2) and that based upon information and belief the acts and transactions of Aaron & Co. came within the exclusions set forth in Rule 144(g)(2).

37. Defendant also alleges that it was common practice in the brokerage industry with respect to substantial blocks of low-priced stocks that for the benefit of the record owners of such stocks arrangements were made with brokerage houses located outside of the State of New York to purchase such shares so that the record owner would not be liable for substantial New York State Transfer taxes on said transactions and, as such, such arrangements have never been deemed a violation of any provision of the federal securities laws.

38. By reason of the foregoing there are no violations of Section 5(a) and 5(c) of the Securities Act of 1933, as amended.

Answer

AS AND FOR A SECOND
AFFIRMATIVE DEFENSE

39. Defendant alleges that at all times relevant hereto he was not an officer, director, stockholder or registered principal of Aaron & Co. and, thus, would not be deemed a controlling person as such term is defined by Section 20 of the Securities Exchange Act of 1934, as amended.

40. Defendant alleges that he did not directly or indirectly induce the alleged act or acts constituting the alleged violations as set forth in the causes of action alleged in the Complaint.

41. By reason of the foregoing the defendant did not violate or aid and abet violations of Section 17(a) of the Securities Act of 1933, as amended, and Section 10(b) of the Exchange Act and 10b-5 promulgated thereunder.

AS AND FOR A THIRD
AFFIRMATIVE DEFENSE

42. Defendant alleges that at all times relevant herein Schreiber was the registered principal who was responsible for supervising himself and all other registered representatives employed at the Long Island Branch Office of Aaron & Co. To the extent there are any violations of the various provisions of the federal securities laws relating to the operations of that office they were the primary responsibility of Schreiber.

44. That if in fact Schreiber and Jacobson committed the acts and transactions alleged in the Complaint, such acts and transactions were not within the scope or authority of their employment.

45. That at all times relevant hereto this defendant did not directly or indirectly supervise the conduct of the registered representatives of Aaron & Co.

Answer

46. By reason of the foregoing the defendant did not aid and abet the other defendants to the extent it is found that the other defendants violated Section 17(a) of the Act, Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder.

WHEREFORE, the defendant, Peter E. Aaron, respectfully demands that this Court deny in all respects the plaintiff's demand for a preliminary injunction and final judgment of permanent injunction and such other and further relief as the Court may deem just and proper under the circumstances.

Respectfully submitted,

s/ Charles J. Hecht
Charles J. Hecht
Attorney for Peter E. Aaron
Suite 1760, 60 E. 42nd St.
New York, N.Y. 10017
(212) 490-3232

Dated: New York, New York
June 25, 1976

CERTIFICATE OF SERVICE

I hereby certify that I am an attorney at law admitted to practice in the State of New York, and that on the 25th day of June, 1976, I caused to be served by United States mail postage prepaid, one copy of the attached Answer upon William D. Moran, Regional Administrator, New York Regional Office, Securities and Exchange Commission, 26 Federal Plaza, New York, New York 10007.

A review of the files of this case at the United States District Courthouse for the Southern District of New York at Foley Square on June 25, 1976 indicates that all of the other

defendants herein, exclusive of Lawn-A-Mat Chemical & Equipment Corp. have consented to the issuance of injunctions and as to that defendant I have been advised by Jeffrey Zivyak of Berman & Zivyak that their client has agreed in principle to an injunction and they are awaiting approval of Judge Ruden before filing the same with this Court and that in connection therewith they do not desire a copy of the Answer of Peter Aaron. Accordingly, copies of the Answer were not served on counsel to the other defendants herein.

Dated: New York, New York
June 25, 1976

Respectfully submitted,

s/ Charles J. Hecht
Charles J. Hecht
Attorney for Peter E. Aaron
Suite 1760
60 East 42nd Street
New York, N.Y. 10017
(212) 490-3232

THE SUPREME COURT'S ORDER GRANTING REVIEW

OFFICE OF THE CLERK

SUPREME COURT OF THE UNITED STATES

WASHINGTON, D.C. 20543

October 15, 1979

Barry M. Fallick, Esq.
230 Park Avenue
New York, N.Y. 10017

RE: Peter E. Aaron v. Securities and Exchange Commission, No. 79-66

Dear Mr. Fallick:

The Court today took the following action in the above case:

"The petition for a writ of certiorari is granted."

Enclosed are memorandums describing the time requirements and procedures under the rules.

The additional docketing fee of $50, Rule 52(a), is due and payable.

Very truly yours,

MICHAEL RODAK, JR., Clerk

by June M. Hoffman
(Miss) June M. Hoffmann
Assistant Clerk

Enclosures